



United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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May 31, 2000

Mr. Bruce Kaneshiro
CPUC EIR Project Manager
c/o Public Affairs Management
101 The Embarcadero, Suite 210
San Francisco, California 94105

Dear Mr. Kaneshiro:

In response to your Notice of Preparation of a Draft Environmental Impact Report (EIR) for the proposed valuation and divestiture of hydroelectric generation and related assets by Pacific Gas and Electric Company, we have enclosed our comments on the scope and content of the environmental information that should be included and analyzed in that EIR.

If you have any questions, please contact Duane Marti at 916-978-4675 or via <dmarti@ca.blm.gov>.

Sincerely,

/s/ David McIlroy

David McIlroy
Acting Deputy State Director
Natural Resources

Enclosure:

Scoping comments

Introduction

The Bureau of Land Management (BLM) manages 14.5 million acres of public lands in California. The diverse terrain of these lands range from sagebrush plains to old-growth forests, from rolling sand dunes to the rugged Pacific coastline, and from lush riparian areas to high deserts. These lands provide habitat for more than 4,000 species of plants and 800 species of wildlife, many of them threatened or endangered; they support rangeland for cattle, sheep, other domestic livestock, and wild horses and burros; they provide recreational opportunities in the form of hiking trails, rivers, off-highway vehicle areas, campground, and more than 3.5 million acres of wilderness areas; they contained significant cultural and historical resources; and they contain vital timber, energy, and mineral resources. Currently, BLM is experiencing approximately 8.1 million visitor days annually by recreationalists using the recreational facilities and opportunities located on the public lands throughout California.

BLM administers public lands within a framework of numerous laws. The most comprehensive of these is the *Federal Land Policy and Management Act of 1976* (FLPMA). All of BLM's policies, procedures, and management actions must be consistent with FLPMA and other laws that govern use of the public lands. It is the mission of BLM to sustain the health, diversity, and productivity of public lands for the use and enjoyment of present and future generations.

For several months, BLM has been reviewing the proposed action in concert with the Forest Service (FS), U. S. Fish and Wildlife Service, National Marine Fisheries Service, and applicable State of California agencies, and have found that all of the federal and state agencies have significant concerns about the proposed valuation and divestiture of hydroelectric generation and related assets by Pacific Gas and Electric Company (PG&E). Since many of the facilities and lands are inholdings within lands owned by either the federal or state government, the proposed action could impact both lands and resources managed by the federal and state agencies.

Baseline

In the Introduction section of the Notice of Preparation (NOP), the project is defined, but the baseline is not. BLM contends that the baseline should be the management practices and conditions that PG&E were using at the time their original application was filed before the California Public Utilities Commission. We further contend that those management practices and conditions would be the same ones that PG&E used when they were regulated by CPUC and operating in a regulated market place. However, PG&E argues that the baseline should be the management practices and conditions that they are now using in an alleged non-regulated market place. BLM, along with the other federal and state agencies, rejects that proposal because they do not believe that it can be adequately defined.

Assumptions

As a result of the proposed action, several scenarios could result, including but not limited to (1) PG&E retains the hydroelectric generation and related assets, but in a non-regulated market place, or (2) Another utility or entity purchases some or all of the hydroelectric generation and related assets. In either case, BLM assumes that the purchaser would have incurred a substantial debt, and that subsequent management practices and conditions would be devised to minimize operating expenses while maximizing revenues. If that is the case, BLM believes that the management of the hydroelectric generation and related assets could be significantly different from that practiced by PG&E under our defined baseline. BLM believes that the difference would be primarily a detrimental change and would result in adverse effects on the resources located on the formerly PG&E owned lands and the adjacent lands.

BLM believes that the following assumptions¹ must be included in the EIR being prepared pursuant to the California Environmental Quality Act (CEQA):

- (1). As a result of PG&E's proposal, and alternatives to it, new and multiple ownership of any of these generating assets may result in changed operations, and that a new balance among power production, water uses, recreational opportunities and environmental stewardship may need to be struck.
- (2). That changed operations may make good business sense for the new owner, but it may bring with it environmental impacts that reduce or outweigh the power production benefits for any one or more of the assets.
- (3). The public's interest in divestiture of these extensive hydroelectric generating assets balances an economically sound approach with an environmentally sound approach.
- (4). The CEQA review should also include, among other things, consideration of the effect of a change in ownership, and perhaps multiple ownership, on water systems and watershed management, agriculture, recreation, and other social and economic interests.
- (5). The CEQA review should include the disposition of additional lands historically associated with the generating assets but not included in the specific FERC licenses (i.e., the watershed lands) because of their watershed preservation and management values.

Specific Comments on Scope and Content of EIR

In Attachment 3 to the NOP, CPUC provides a summary of the potential environmental issues and impacts that will be analyzed in the EIR. BLM commends CPUC for that

¹ As cited in the Scoping Memo issued by ALJ Hale on January 13, 2000, at pages 3 and 4.

good summary and agrees that all of those issues and impacts need to be analyzed. However, BLM has the following additional issues and impacts that it believes should also be analyzed.

LANDS

PG&E has identified approximately 140,000 acres of lands owned by it into two categories: (a) approximately 95,000 acres are FERC project lands, and (b) approximately 45,000 acres are watershed lands. The former category supposedly includes those lands that are needed for the operation of a licensed power project, while the latter are those lands that are owned by PG&E, but are located outside of a project boundary or are not needed for the operation of a licensed power project. However, both BLM and FS have reviewed these two categories, and have found that they are not clearly defined or identified. The two agencies have concluded that many of the lands identified by PG&E as project lands, should really be identified as watershed lands. Consequently, the EIR needs to clearly identify which lands are in which category.

Recently, BLM in conjunction with the Department of the Interior, has developed a proposal that during relicensing, project lands would be reviewed to determine if they are really needed for the operation of the project. If not, then they should be removed from the project and returned to the management of the surface managing agency (e.g., FS, BLM). This proposal has been presented to the Federal Energy Regulatory Commission (FERC) for its review. In Montana, BLM reached an agreement with Montana Power Company (MPC), during a recent relicensing, to implement this proposal. MPC agreed that lands were not needed for the operation of the project, but that they were needed to provide mitigation for the project. Consequently, MPC agreed to release those lands from project status, returned them to management by BLM, and provides an annual stipend to BLM to manage those lands for mitigation purposes. BLM thinks that this concept should be analyzed or identified as a possible alternative in the EIR.

Since approximately 1996, BLM has participated in the ad hoc Utility Lands Work Group, which was primarily composed of both federal and state agencies, who worked with PG&E cooperatively to identify watershed lands that contained significant natural resource values. One of the goals of that cooperative effort was to develop a process by which either federal or state agencies could acquire those lands that were deemed surplus by PG&E. BLM has also worked directly with PG&E to acquire surplus lands located in the Hat Creek and Pit River watershed. However, both of those efforts have been placed in abeyance pending resolution of PG&E's current application before CPUC. The EIR needs to clearly identify which watershed lands are considered by

PG&E to be surplus and thus may be available for acquisition by federal or state agencies or their designees. Those lands should be offered to the agencies or their designees under a “right of first negotiation” for acquisition. Conservation easements may be another option for protection of those lands.

BOUNDARY AND TRESPASS

PG&E owned lands often are inholdings within lands owned by either the federal or state government and most of the boundaries between the publicly owned lands and PG&E lands have not been surveyed or clearly delineated. Because PG&E has not actively managed its lands for either resource development or extraction, the lack of clear boundaries have not been a major problem. However, if the new owners wanted to develop resources or extract them, then a clear boundary is an important method to prevent inadvertent trespass or encroachment onto publicly owned lands. However, the survey and delineation of boundaries is very expensive, ranging from approximately \$7,500 per mile (for small scale projects) to approximately \$250,000 per township (for larger scale projects). Currently, both BLM and FS have a number of pending cases of trespass by adjacent landowners. This situation would be exacerbated by new and more numerous landowners that could be expected to practice more aggressive forms of land management and resource development than has PG&E.

POTENTIAL DEVELOPMENT OF PG&E'S LANDS

Currently, both BLM and FS have worked with PG&E to develop fuel management strategies covering their lands located within a watershed or regionally. However, those cooperative efforts could be jeopardized by new landowners who want to develop both the former PG&E lands and the resources located on them. Development of housing or large recreational and/or resort projects on those lands would change the current situation from a fire danger that is a low risk timber environment to one that is a higher risk urban/wildland interface.

A change in ownership could result in new owners that could want to develop both the former PG&E lands and the resources located on them. That would be a change from PG&E current custodial management of those lands. The new development could be in conflict with the current and future uses of the adjacent publicly owned lands and the current land use plans developed for those lands. Such development could include logging, mineral development, construction of residential units or resort facilities. or result in closing those lands to public access or recreational use by the public. Some of the impacts resulting from this development would be changes in noise levels, modification of existing view sheds or aesthetics, public safety, increased soil erosion or landslides, discharge or introduction of hazardous materials, and water quality of

adjacent streams, rivers or reservoirs. Consequently, the EIR needs to analyze the likelihood of development of the former PG&E lands and identify potential conflicts with current land uses of the adjacent lands owned by other land owners and applicable land use plans developed by federal, state, or local agencies.

MINERAL RESOURCES

The State Department of Conservation has identified regionally significant mineral deposits, which may include some of the PG&E owned lands. Like that state agency, BLM is concerned that post-auction land use changes could result in the foreclosure of future access to significant deposits of mineral resources. This scenario has already occurred throughout California because counties often have failed to protect those areas from development, either on the identified lands or those lands located adjacent to them. With the new development, there often develops a "not in my backyard" scenario which effectively precludes future use of that mineral resource. BLM has seen this scenario develop for both publicly and privately owned mineral estates here in California, resulting in abandonment of the proposed mineral development or severe restrictions being imposed on it. Consequently, the EIR needs to analyze the likelihood that development of the former PG&E lands could preclude future access to these significant deposits of mineral resources. This issue was not included in Attachment 3 of NOP, which contained a summary of potential environmental issues and impacts, as identified by CPUC.

RECREATIONAL OPPORTUNITIES

The analysis should discuss the effects of changed project operations on the revenue received by rural counties where these projects are located. Changing lake and stream levels would likely decrease the appeal for recreational use by the public and would result in lower revenues to counties and the local businesses that are recreation dependent.

Because streams, rivers, and reservoir are an important component of the hydropower system, the effect that the proposed auction could have on the recreational use and opportunities of those waterways must be considered in the EIR. Some impacts could include closure or restriction of public access to those waterways by the new owners, decrease in water levels or instream flows could have a detrimental effect on recreational opportunities, and changing water levels could also render current put-in and take-out sites unuseable.

For many years, PG&E has cooperated with federal and state agencies in the collection and sharing of hydrometeorologic data used for forecasting water supply, snowmelt runoff, river flows, and potential flood conditions throughout California. BLM and FS both use that data to determine recreational opportunities on their lands. Consequently, it is imperative that the new owners continue to participate in the accurate, complete, and timely sharing of this data. The EIR must analyze the effect that the auction would have on this data system.

CONSULTATION

BLM strongly believes that the proposed auction is an action that requires consultation with the U. S. Fish and Wildlife Service and the National Marine Fisheries Service, pursuant to the *Endangered Species Act*. BLM does not believe that consultation is an option, but is statutorily required by that law and its accompanying regulations. Consequently, the EIR needs to analyze the effect that the auction would have on endangered species and marine fisheries, in concert with those two agencies. Consultation was not identified in Attachment 3 of NOP, which contained a summary of potential environmental issues and impacts, as identified by CPUC.

BLM also believes that the proposed auction is an action that requires consultation with the California State Historical Preservation Officer, pursuant to the *National Historic Preservation Act*. Consequently, the EIR needs to analyze the effect that the auction would have on cultural, historical, and archaeological resources, in concert with that agency. Some impacts could include increased access to locations containing these resources, changing water levels could either expose or erode these resources, and increased opportunity for vandalism, destruction, or theft of these resources.

Under various federal laws and regulations, Indian tribes are recognized as sovereign nations, and must be consulted, proactively, before federal agencies undertake any actions that potentially affect their lands, resources, practicing of their religions, or use of traditional areas. BLM strongly believes that the principle of consultation and coordination also pertains in this proceeding. Consequently, the EIR needs to analyze the effect that the auction would have on the Indian tribes located in California, in

concert with them.

SCALE OF ANALYSIS

Over the past few months, there has been much discussion between the federal and state agencies as to the most meaningful scale to provide a useful framework for analyzing the potential impacts of the auction. BLM strongly believes that the scale of analysis should be at the river system or watershed level, because that would result in the most meaningful analysis. In the Lands section of the NOP (at pages 3 and 4), CPUC states that “the greater the numbers of landowners, the greater the potential of completing management goals and the complexity of managing the watershed in a way that benefits environmental quality and downstream uses”. BLM agrees with that statement and believes that the analysis, as described in Attachment 3 of the NOP, in the EIR should be conducted at the river system or watershed level.

Currently, federal agencies are managing two programs on a watershed level basis. In February of 1998, President Clinton issued the Clean Water Action Plan, which directed the Departments of Agriculture and the Interior to develop an unified federal policy in consultation with other federal and state agencies, tribes, and interested stakeholders. The resulting policy would provide a framework for a watershed approach to management of federal lands and resources in that watershed. Through the Interdepartmental Abandoned Mine Lands Initiative, BLM is working in partnership with other federal, state and local agencies, tribes, and private parties to accelerate the rate of cleanup of watersheds affected by abandoned hard rock mines. Abandoned hard rock mines sites may affect public health and the environment due to release of hazardous substances from waste materials and acid drainage. Recently, BLM has been conducting clean-up work at abandoned hard rock mines in the following watersheds: Bear, Yuba, American, Merced, and Kern. Consequently, the EIR needs to analyze the effect of the auction and the likelihood that development of the former PG&E lands could have on these two initiatives.

As a result of an intradepartmental task force, the Department of the Interior now recommends that all future relicensing of power projects be conducted on a watershed basis and has submitted that proposal to FERC for its review and approval. Currently, the licensee has the option of relicensing each license independently or as a group, within a watershed. Looking at PG&E’s current licenses on the Pit River and Hat Creek, which is a watershed, shows the merit of this proposal. Currently, PG&E holds four separate licenses (i.e., Power Project nos. 2661, 2667, 0233, and 2106), which are being relicensed independently. If the four licenses were being relicensed together, it would be easier to ascertain cumulative effects and reduce the redundancy of studies and data analysis. As stated above, BLM believes that the analysis of potential

environmental issues and impacts should be conducted at the river system or watershed level.

PROJECT ABANDONMENT AND ACCIDENTS

In the new non-regulatory environment, many of the facilities may not be economically viable. Would the new owner have the financial capacity to decommission the facility and return the resources to their natural conditions as required by their FERC license? The new owner will not have the ability to pass these costs on to the ratepayer as PG&E does now. As FS has learned here in California with the Sayles Flat project and as the Department of the Interior has learned in other states, FERC may not require licensees with limited finances to remove project features or restore federally or state owned lands upon surrender of the license. Thus resulting in an extreme risk for natural resources managed by the federal and state agencies if projects are transferred to new owners with limited financial capacity. The risk abandonment of project facilities exists now and can only be exacerbated with a transfer of ownership. Consequently, the EIR needs to analyze the risk of project abandonment and determine procedures (e.g., establishment of a decommissioning fund) by which this risk is minimized.

Disasters and accidents happen, resulting in broken flumes or failed pipelines sending million of gallons of water or other liquids down fragile watershed. Although FERC licenses requires emergency procedures and responses to be in place and operational, it takes great corporate capacity to truly respond quickly and appropriately to protect and restore the environment. PG&E has numerous resources located statewide that they can and have brought to bear in responses to emergencies. A new owner may not have either this capacity or the will to do so. Consequently, the EIR needs to analyze the risk of disasters and accidents occurring and determine procedures by which this risk is minimized.

INFORMAL AGREEMENTS

Currently, there are numerous informal agreements that PG&E has developed with federal, state, and local agencies or groups. Examples include development and operation of a recreational facility not required by the FERC license, maintenance of a reservoir level or instream flow above the minimum or beyond the date required by the FERC license, or assistance provided to local agencies or groups. These agreements need to be identified in the EIR, and subsequently, formally authorized, to ensure that these services, facilities, or actions continue to be provided to the public after the auction is completed.

ALTERNATIVES

BLM agrees with CPUC's determination that the no project alternative is retention by PG&E. However, BLM believes that the following alternatives should also be considered by CPUC in their EIR:

(1). Retention with a new rate making framework

BLM believes that the valuation could be achieved through appraisal and that PG&E retains the hydropower system and its related assets under a new rate making framework. This alternative is very similar to that being proposed by Southern California Edison before CPUC, in regards to its hydropower system and its related assets. Such a proposal could provide for a revenue sharing mechanism whereby a certain percentage of project revenue is set aside for environmental improvements. The utility would not have sole control over that money, but would manage it in conjunction with appropriate federal and state agencies. Furthermore, the money would not be spent on activities or studies that the utility is required to do anyway as part of the FERC relicensing or other process. Another component is the establishment of conservation easement on the utility lands. They could improve the protection of the public trust resources and value those lands possess, particularly in light of the changes deregulation has brought to the utility industry, and would result in a more accurate value of those lands.

(2). Retention of those projects currently undergoing relicensing

BLM believes that those projects currently undergoing relicensing should remain under PG&E ownership until they have been relicensed. Until the new license has been issued by FERC, a new owner would not know, with any certainty, exactly what operating, maintenance, or environmental conditions will be imposed in the new license. Consequently, after the new license has been issued, a valuation of that project under new license could be determined by appraisal and the new owner would know with certainty, the new operating parameters governing that project.